British stockholders in stock held by the voting trust. Their claim is twofold: 1. As equitable owners of the pooled stock, they demand that it be transferred to them, or voted as they shall direct. 2. As holders of stock in their own names, they claim the right to challenge the legality of the voting trust. *Held:* 1. That complainants, as equitable owners of stock held by the trust, could revoke the authority to vote such stock, and compel a reconveyance, and in the meantime could direct the voting of it; and, 2, that the American stockholders could enjoin the carrying out of the trust. *Warren, et al.*, v. *Pim, et. al.* (1903), — N. J. —, 55 Atl. Rep., 66.

The court was of the opinion, that the agreement between the consenting stockholders and the committee, would not give an irrevocable authority to vote the stock, as it was without consideration, and had not been given for any specified time. As to the other question in the case, the court said, that "the creation of the pool with its ironclad provisions and without the knowledge or consent of complainants gave defendants as holders of the foreign stock, an unfair and unjust advantage, in that it deprived the complainants of the right to appeal to, and have the benefit of, the individual judgments of the foreign stockholders, upon any and all matters connected with the policy or management of the corporation." Cases involving the subject of voting trusts have arisen before in New Jersey. In *Cone* v. *Russell*, 48 N. J., Eq. 208, 21 Atl. Rep. 847, *White v. Thomas Inflatable Tire Co.*, 52 N. J. Eq., 178, 28 Atl. Rep., 75, *Kreissl* v. *Distilling Company of America*, 61 N. J. Eq. 5, 47 Atl. Rep. 471, such agreements were held void, not on the ground that all such were necessarily void, but because of circumstances in each case rendering them illegal, and in *Chapman* v. *Bates*, 61 N. J. Eq., 658, 48 Atl. Rep. 638, a voting trust was upheld against a stockholder seeking to revoke. None of the previous decisions seems to have been based upon the same ground as the court takes in disposing of the second question in this case, *i. e.*, the right of a stockholder to have the independent judgment of every other stockholder as to the management of the corporation.

Pooling agreements have been held valid in *Smith* v. *San Francisco & N. P. R. R. Co*,, 115 Cal., 584, 47 Pac. Rep. 582, 35 L. R. A., 309, *Brown* v. *Pacific Mail Steamship Co.*, 5 Blatch., 525, *Mobile & Ohio R. R. Co.* v. *Nicholas*, 98 Ala. 92, 12 South. Rep. 723, *Hey* v. *Dolphin*, 92 Hun, 230.

COVENANTS—BENEFITS AND BURDENS—PRIVITY OF ESTATE.—X, the owner of a saw mill, covenanted with H, the owner of a flour mill, to keep the mill race free from trash. The covenant was to benefit the heirs and assigns of H, and expressly stated that it was to run with the land. In an action by J, the assignee of the property of H, *Held*, that plaintiff could recover on the covenant. *Hurxthal* v. *St. Lawrence Boom & Lumber Co.* (1903), — W. Va. — 44 S. E. Rep. 520.

In the course of the opinion the court determined that as no interest in land was created or conveyed, there was no privity of estate between the parties, hence the covenant was personal and could not run with the land. *Lydick* v. *The Railroad*, 17 W. Va. 427. Nor could the parties make the covenant run with the land by merely declaring "that it shall run with the land." *Glenn* v. *Canby*, 24 Md. 127. Yet the court permitted the plaintiff to recover because the benefit of the covenant was intended to go to the assigns of H. Although the reasoning of the court seems inconsistent, yet the conclusion reached by the court is supported by authority. *Nat. Bank* v. *Segur*, 39 N. J. L. 173, 174. *Mygatt* v. *Coe* (dissenting opinion), 124 N. Y. 212. In the dissenting opinion of the last citation, where the authorities were reviewed and *Packenham's Case*, Y. B. 42 Ed. III. 3, relied upon, the dissenting

judge, admitting that as a general rule, a covenant could not run with the land unless there was privity of estate between the covenantor and the covenantee, held that covenants benefiting the land, as covenants for title, were exceptions to the rule, adopted upon commercial considerations. Many authorities discrediting *Packenham's Case*, adhere to the rule that no covenant can run with the land, unless there is privity of estate between the covenantor and the covenantee. *Hurd* v. *Curtis*, 19 Pickering, 459. *Mygatt* v. *Coe*, 124 N. Y. 212; *Wheeler* v. *Schad*, 7 Nev. 204.

DAMAGES—BREACH OF CONTRACT—MENTAL SUFFERING.—One Smith died in the pest-house of smallpox, whereupon his widow and children contracted with the defendant for a suitable coffin and burial robe to be delivered at the pest-house, and paid for the same. Defendant actually delivered a cheap pine box, too small for the corpse, and no robe, with the expectation that as plaintiffs were not allowed to attend the funeral, the breach of contract would not be discovered. This is an action to recover for the breach of the contract, and for the mental suffering caused thereby. In the lower court judgment was given for $725.50, viz., $25.50 amount paid over value of box furnished, $500 actual damages for mental suffering, and $200 exemplary damages. Defendant appealed. *Held*, that the evidence warrants the judgment. *J. E. Dunn & Co.* v. *Smith* (1903), — Tex. —, 74 S. W. Rep. 576.

The decision in this case is not in accordance with the weight of authority in allowing damages for mental suffering in case of breach of contract. It is, however, directly supported by *Renihan* v. *Wright*, 125 Ind. 536, 25 N. E. Rep. 822, 21 Am. St. Rep. 249, 9 L. R. A. 514, and is a logical application of the principle first announced by the Texas court in *So Relle* v. *Tel. Co.*, 55 Tex. 308, which has been followed in a considerable number of states, among these being Indiana, Kentucky, Tennessee, North Carolina, Alabama, and Louisiana. See MICHIGAN LAW REVIEW, Vol. II. p. 150. The awarding of exemplary or punitive damages in an action on contract, with the exception of breach of promise of marriage, is clearly opposed to the common law doctrine, and is contrary to the overwhelming weight of authority. *Duche* v. *Wilson*, 37 Hun. 519; *Ryder* v. *Thayer*, 3 La. Ann. 149; *Lane* v. *Wilcox*, 55 Barb. 615; *Hoy* v. *Gronoble*, 34 Pa. St. 9, 75 Am. Dec. 628; *Snow* v. *Grace* 25 Ark. 570; *Gordon* v. *Brewster*, 7 Wis. 355; *Thomas* v. *Peterson*, 24 S. W. 1125. Contra, *Hays* v. *Anderson*, 57 Ala. 374. The justice of this particular case seems to call for heavy damages, but that such deviation from principle brings about startling results is well shown by the case of *Lewis* v. *Holmes*, commented on in the following note.

DAMAGES—BREACH OF CONTRACT—MENTAL SUFFERING.—The defendant, a fashionable milliner, contracted with the plaintiff to furnish a wedding dress and four other dresses, constituting her daughter's trousseau, and deliver them by April 17. The wedding dress was delivered the sixteenth, but did not fit. As the wedding was to occur the nineteenth, the wedding dress was made over at the plaidtiff's home, but word was sent to defendant to follow measurements more carefully on the other dresses. Defendant thereupon sent back the goods furnished for the other dresses, and the mother brings this action, jointly with the daughter and her husband, to recover for the breach of contract and for the mental suffering of the daughter, caused by disappointment at not having her trousseau. Evidence showed that the daughter had to give up several entertainments which were planned for the festivities, and to curtail the wedding journey. Damages of $575 for mental suffering were allowed by the lower court, and defendant appealed.